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No.

Supreme Court, U.S.

FILED

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JOSEPH F. SPANIO, JR.  
CLERK

IN THE  
SUPREME COURT of the UNITED STATES  
October Term, 1990

In the Matter of  
IRVING RODIN, NEIL RODIN, and BARBARA RODIN,

Plaintiffs

NEIL RODIN, Individually, and as Successor  
of IRVING RODIN, and BARBARA RODIN,

Petitioners,

v.

TESSIE SALZMAN, as Personal Representative  
of the Estate of Nettie Golden, Deceased,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE ELEVENTH CIRCUIT.

PETITION FOR WRIT OF CERTIORARI

Neil Rodin, Individually, and as Successor  
of Irving Rodin,  
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(305) 893-2465

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## QUESTIONS PRESENTED

1. Did the plaintiffs' complaint in the United States District Court for the Southern District of Florida, state claims for relief and redress within the jurisdiction of the Court?

2. Are various Judges in Miami, Florida, and various Judges in the United States Court of Appeals for the Eleventh Circuit, Atlanta, Georgia, impairing and destroying the lives and property of citizens of the United States by disregarding United States Supreme Court decisions, and by disregarding provisions of the United States Constitution and Amendments thereto, and by disregarding Civil Rights Acts and Laws enacted by the Congress of the United States?

3. Should the plaintiffs' complaint have been dismissed by the United States District Court for failure to state a complaint for relief, and by affirmance on appeal by the United States Court of Appeals for the Eleventh Circuit, or should the Court of Appeals have reversed or vacated such dismissal?

## QUESTIONS PRESENTED-Continued

4. Should the defendant's defaults in duly and timely responding to the complaint, duly entered by the Clerk of the Court below against the defendant and in favor of each of the plaintiffs respectively, have been vacated and set aside by the said United States District Court below, and by affirmance on appeal by the United States Court of Appeals for the Eleventh Circuit, or should the Court of Appeals have reversed or vacated the lower Court's vacating and setting aside of the defendant's defaults in the absence of a showing by defendant of both (1) a reasonable and proper excuse for defendant's defaults and (2) a meritorious defense to the complaint?

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IN THE  
SUPREME COURT OF THE UNITED STATES  
October Term, 1990

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In the Matter of  
IRVING RODIN, NEIL RODIN and BARBARA RODIN,

Plaintiffs

NEIL RODIN, Individually, and as Successor  
of IRVING RODIN, and BARBARA RODIN,

Petitioners,

V.

TESSIE SALZMAN, as Personal Representative  
of the Estate of Nettie Golden, Deceased,

Respondent.

---

PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
ELEVENTH CIRCUIT

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Petitioners respectfully pray for a writ of  
certiorari to review the decision and judgment  
of the United States Court of Appeals for the  
Eleventh Circuit made and entered on June 12,  
1990.

OPINIONS BELOW

The order of the United States Court of Appeals for the Eleventh Circuit of June 12, 1990, by Judges Fay, Cox and Tuttle, given and transcribed and delivered upon the rendering of the June 12, 1990 judgment of the United States Court of Appeals for the Eleventh Circuit, appears in Appendix A, p. 1a, below.

The order of August 10, 1990 of this United States Court of Appeals, entered for the Court by Judge Peter T. Fay, denying application for rehearing and suggestion of rehearing in banc, appears in Appendix B, p. 3a, below.

The mandate of said United States Court of Appeals, issued August 20, 1990, appears in Appendix C, p. 3a, below.

The orders and opinions below appear in the Appendix hereto, Appendix A through I, pp. 1a - 27a, below.

## JURISDICTION

The judgment and decision of the United States Court of Appeals for the Eleventh Circuit was entered on June 12, 1990. The order entered August 10, 1990 of this Court of Appeals denied application for rehearing and suggestion of rehearing in banc. The mandate of said Court of Appeals issued August 20, 1990.

The jurisdiction of the Supreme Court of the United States is invoked under 28 U.S.C. Section 1254(1)

## CONSTITUTION PROVISIONS AND STATUTES INVOLVED

United States Constitution, Articles VI and III; United States Constitution, Amendments XIV, V, I, IV, VIII and IX.

28 U.S.C. Sections 1331 and 1343.

42 U.S.C. Sections 1983, 1985 and 1988.

28 U.S.C. Section 1654.

The pertinent text of the constitutional provisions and statutes involved are set forth in the Appendix hereto, Appendix J through W, pp. 28a - 43a, below.

STATEMENT OF THE CASE

This action was brought by Plaintiffs Irving Rodin, Neil Rodin and Barbara Rodin, against Defendant Tessie Salzman, as Personal Representative of the Estate of Nettie Golden, deceased. The complaint was filed and the summons duly issued in the United States District Court for the Southern District of Florida, on January 3, 1989. The complaint set forth ten Counts.

On January 5, 1989, a motion for the appointment of process server Octavio Fiol was made to serve process in this action, and an order was duly made on January 5, 1989 appointing said process server.

On January 6, 1989, said Octavio Fiol made service of the summons and complaint personally on the Defendant at 1401 N.E. 191 Street, North Miami Beach, Florida, at Apt. #310, and his return of service executed on January 9, 1989 was filed herein on January 9, 1989 at 2:53 P.M.

The complaint stated that this action arises

under the Constitution of the United States, and the Fourteenth, Fifth, First, Fourth, Eighth, and Ninth Amendments to the Constitution of the United States, and under 42 U.S.C. Sections 1983, 1985 and 1988, and under 28 U.S.C. Section 1654.

The complaint stated that the United States District Court below had jurisdiction of this action pursuant to law and pursuant to 28 U.S.C. Sections 1331 and 1343.

The complaint stated that the Defendant Tessie Salzman, is the appointed and acting personal representative of the Estate of Nettie Golden, and that although Plaintiffs duly and timely presented and filed their claims against the Estate of Nettie Golden, the Defendant objected thereto and in nowise paid or satisfied Plaintiffs' claims, and that suit was filed herein in the United States District Court for the Southern District of Florida, within thirty days of Defendant's objections.

The complaint stated that in violation and deprivation of the Plaintiffs' rights as

citizens of the United States of America guaranteed and protected by the Constitution of the United States and its Laws, void, unlawful, and fraudulent default judgments were secured by Nettie Golden in the State Circuit Court of the Eleventh Judicial Circuit of Florida, in Miami, Florida; and that these default judgments were also secured as a result of Nettie Golden bribing certain state court Judges in Miami, Florida, in order in order to obtain them.

The complaint stated that Irving Rodin and his wife Regina Rodin, in said State Court were denied their lawful rights respectively to appear and be heard, Irving Rodin pro se, and Regina Rodin, by counsel of her choice, after they had lawfully ~~se~~ appeared, to defend themselves and to assert rights, and have access to the Court to secure redress. The complaint stated that this occurred in an action commenced by Nettie Golden against Irving Rodin and Regina Rodin in said State Court in Miami, Florida.

The complaint stated that after Irving Rodin and Regina Rodin were denied their lawful rights to lawfully appear and be heard as aforesaid, and in their absence, said Nettie Golden secured two default judgments against them in said State court in Miami, Florida; one default judgment taking away, destroying and ruining the property and rights of Irving Rodin and his wife Regina Rodin, theretofore duly granted and deeded to them in and with respect to a condominium apartment unit 911-W in Buckley Towers, a condominium, in Dade County, Florida, and the other default judgment against them for \$27,000 for attorneys fees and costs for said Nettie Golden, now deceased.

The complaint stated that Plaintiff Neil Rodin and Plaintiff Barbara Rodin, were not parties in the aforesaid state court action wherein Nettie Golden secured said void and unlawful two default judgments against Irving Rodin and his wife Regina Rodin.

The complaint stated that Plaintiffs Neil Rodin and Barbara Rodin, were bona fide purchasers for value of the aforesaid condominium apartment unit 911-W in Buckley Towers, and that in the absence of Neil Rodin and Barbara Rodin, and without either of them lawfully being heard on the merits, said Nettie Golden also secured an unlawful default judgment against them in said State court, unlawfully taking away and destroying the property and property rights, and right, title and interest of Plaintiffs Neil Rodin and Barbara Rodin to said condominium apartment unit 911-W in Buckley Towers, and the appliances, fixtures and carpeting located therein.

The complaint stated that the ownership and rights of Plaintiffs Barbara Rodin and Neil Rodin were pursuant to lawful deed duly granted to Barbara Rodin and Neil Rodin, her husband, which had been granted to them prior to the securing by Nettie Golden of the said void, unlawful, and fraudulent default judgments aforementioned, and which void,

unlawful, and fraudulent default judgment secured by said Nettie Golden against Barbara Rodin and Neil Rodin was predicated upon the previous aforesaid void, unlawful, and fraudulent default judgments secured by Nettie Golden as aforementioned against Irving Rodin and his wife, Regina Rodin in their absence.

The complaint stated that said void default judgments were secured unlawfully, and fraudulently, as aforesaid, and were obtained by and through conspiracy with State Court Judges, corruption, perjury, unethical practices, and bribery of State Court Judges, and concerning, Judges assigned to said State Court case and proceedings in said Circuit Court and the Appellate Court thereof, in Miami, Florida, and their servants, agents, employees, associates, and relatives.

The complaint stated with respect to Count I of the Plaintiff Irving Rodin, that the Plaintiff Irving Rodin, individually, and additionally as husband, assignee, and

transferee of the right, title, interest, and causes of action, of Regina Rodin, sought and demanded judgment against Defendant in the sum of Ten Million (\$10,000,000) Dollars damages, or such greater sum as is proper and just, and setting aside and cancelling the aforesaid two void, unlawful and fraudulent default judgments complained of in Count I, and enjoining the enforcement of said default judgments, together with reasonable attorneys fees, costs, and such other and further relief as is proper and just, for which Tessie Salzman, as Personal Representative of the Estate of Nettie Golden, deceased, is liable to Plaintiff herein.

The complaint stated with respect to Count II of the Plaintiff Neil Rodin and with respect to Count III of the Plaintiff Barbara Rodin, that they respectively each sought and demanded judgment against Defendant in the sum of Ten Million (\$10,000,000) Dollars damages, or such greater sum as is proper and just, and setting aside and cancelling the aforesaid three void,

unlawful and fraudulent default judgments complained of, and enjoining the enforcement thereof, together with reasonable attorneys fees, costs and such other and further relief as is proper and just, for which Tessie Salzman, as Personal Representative of the Estate of Nettie Golden, deceased, is liable respectively to each of the Plaintiffs Neil Rodin and Barbara Rodin herein.

The complaint stated with respect to Count IV of the Plaintiff Irving Rodin, that the Plaintiff Irving Rodin, individually, and additionally as husband, assignee and transferee of the right, title, interest, and causes of action, of Regina Rodin, sought and demanded judgment against defendant in the sum of Two Million (\$2,000,000) Dollars damages, or such greater sum as is proper and just, together with costs, for which Tessie Salzman, as Personal Representative of the Estate of Nettie Golden, deceased, is liable to Plaintiff herein.

In addition to the aforesaid Counts I, II, III and IV of the complaint herein, additional pendent causes of action were set forth in the complaint against the Defendant herein. Counts V, VI, VII, VIII, IX and X.

The complaint stated with respect to Count V of the Plaintiffs Irving Rodin and Neil Rodin, that Plaintiffs Irving Rodin and Neil Rodin, individually, and additionally as co-assignees and co-transferees, with the right of survivorship, of the right, title, interest, and causes of action, of Regina Rodin, sought and demanded judgment due said Plaintiffs Irving Rodin and Neil Rodin against the Defendant for the sum certain of at least One Hundred Thousand (\$100,000) Dollars, which was agreed to be paid, and was unpaid, by said Nettie Golden, and was a reasonable value for work, labor and services performed and furnished for her during her lifetime, and accepted by her and the benefits thereof received by her, and for which Defendant,

Tessie Salzman, as Personal Representative of the Estate of Nettie Golden, deceased, is liable herein.

The complaint stated with respect to Counts VI, VII, VIII and IX of the Plaintiff Irving Rodin, that he sought and demanded judgment against Defendant in the sum of One Million (\$1,000,000) Dollars, or such greater sum as is proper and just, each Count respectively, with respect to damages due for stated defamation by Nettie Golden, for which Defendant, Tessie Salzman as Personal Representative of the Estate of Nettie Golden, deceased, is liable herein.

The complaint stated with respect to Count X, of the Plaintiff Neil Rodin, that he sought and demanded judgment against Defendant in the sum of Five Hundred Thousand (\$500,000) Dollars, or such greater sum as is proper and just, with respect to damages due for stated defamation by Nettie Golden, for which defendant, Tessie Salzman, as Personal Representative of the Estate of Nettie Golden,

deceased, is liable herein.

As hereinabove indicated the Defendant was personally served with the summons and complaint herein on January 6, 1989. The return of service by the Court appointed process server, executed on January 9, 1989 was filed herein on January 9, 1989.

The Defendant did not duly and timely file and serve on Plaintiffs a response to the complaint as required by law. On May 15, 1989 motions were made by each of the Plaintiffs respectively for the entry of Defendant's defaults. On May 16, 1989, the Clerk of the United States District Court below duly entered the Defendant's defaults against the Defendant in favor of each of the Plaintiffs respectively.

Subsequently and contrary to law, a United States District Court Magistrate, in the Miami Division, Samuel J. Smargon, without any trial on the merits, erroneously and disgracefully held the complaint fails to state a claim upon which relief may be granted and he recommended that the complaint be dismissed.

The Plaintiffs duly filed objections to their report and recommendation of said Magistrate.

It may also be noted that this Magistrate at the time was in the process of resigning from the court as Magistrate to go into private practice before the Judges in Miami, Florida, and has resigned.

Thereupon without any trial of the case on the merits, the United States District Court, Miami Division, Judge Sidney M. Aronovitz, dismissed the complaint also holding the complaint does not state a complaint for relief, and disparaging the complaint, and vacating and setting aside the defaults duly entered by the Clerk of the Court.

On August 24, 1989, NOTICE OF APPEAL was filed by Plaintiffs from the order of dismissal of the complaint filed herein, signed by Judge Sidney M. Aronovitz July 25, 1989 and entered on July 28, 1989; and from the additional order vacating and setting aside the defaults, theretofore duly entered by the Clerk of the

United States District Court below in favor of Plaintiffs and against the Defendant, and which additional order was signed by Judge Sidney M. Aronovitz July 25, 1989, and entered on July 25, 1989.

The order of affirmance of the United States Court of Appeals for the Eleventh Circuit of June 12, 1990 by Judges Fay, Cox and Tuttle, given and transcribed and delivered upon the rendering of the June 12, 1990 judgment of said Court of Appeals, appears in Appendix A, p. 1a below.

The order of August 10, 1990 of the United States Court of Appeals for the Eleventh Circuit, entered for the Court by Judge Peter T. Fay, denying application for rehearing and suggestion of rehearing in banc, appears in Appendix B, p. 2a, below.

The mandate of the United States Court of Appeals for the Eleventh Circuit issued August 20, 1990 appears in Appendix C, p. 3a, below.

The orders and opinions below appear in the Appendix A through I, pp. 1a - 27a, below.

REASONS FOR GRANTING THE WRIT

The United States Supreme Court in Windsor v. McVeigh, 93 U.S. 244, in no uncertain terms, condemned such void and unlawful "judgments" secured by Nettie Golden, and the violation and deprivation of Plaintiffs' rights to due process of law, to lawfully appear and be heard and fair trial, and to equal protection of the laws, guaranteed by the Constitution of the United States. This Honorable United States Supreme Court held:

\*\*"The monition stated that at the trial all persons interested in the land, or claiming an interest, might 'appear and make their allegations in that behalf.' The notice warned all persons to appear at the trial, 'to show cause why condemnation should not be decreed, and to intervene for their interest.'

The owner of the property, in response to the monition and notice, appeared by counsel, and filed a claim to the property and an answer to the libel. Subsequently, on the 10th day of March, 1864, the district-attorney moved that the claim and answer and the appearance of the respondent by counsel be stricken from the file, on the ground that it appeared from his

answer that he was at the time of filing the same 'a resident within the city of Richmond, with the Confederate lines, and a rebel.' On the same day a motion was granted, and the claim and answer ordered to be stricken from the files. The appearance of the respondent was by his answer. The court immediately entered its sentence and decree, condemning the property as forfeited to the United States, reciting that the usual proclamation having been made, the default of all persons had been duly entered. The decree ordered the issue of a venditioni exponas for the sale of the property, returnable on the 16th day of the following April. At the sale under this writ the grantor of the defendant became the purchaser.

The question for determination is whether the decree of condemnation thus rendered, without allowing the owner of the property to appear in response to the monition, interpose his claim for the property, and answer the libel, was of any validity. In other words, the question is whether the property of the plaintiff could be forfeited by the sentence of the court in a judicial proceeding to which he was not allowed to appear and make answer to the charges against him, upon the allegation of which the forfeiture was demanded."

That the court in affirming judgment for the plaintiff, went on to state:

\*\*"In delivering the unanimous opinion of this court, upon reversing the decree in the case, and referring to the order striking out the claim and answer, Mr. Justice Swayne said: 'The order in effect denied the respondent a hearing. It is alleged he was in the position of an alien enemy, and could have no locus standi in

that forum. If assailed there, he could defend there. The liability and right are inseparable. A different result would be a blot upon our jurisprudence and civilization. We cannot hesitate or doubt on the subject. It would be contrary to the first principles of the social compact and of the right administration of justice.'

\*\* A denial to a party of the benefit of a notice would be in effect to deny that he is entitled to notice at all, and the sham and deceptive proceeding had better be omitted altogether. It would be like saying to a party, Appear, and you shall be heard; and, when he had appeared, saying, Your appearance shall not be recognized, and you shall not be heard. In the present case, the District Court not only in effect said this, but immediately added a decree of condemnation, reciting that the default of all persons had been duly entered. It is difficult to speak of a decree thus rendered with moderation; it was in fact a mere arbitrary edict, clothed in the form of a judicial sentence.

The law is, and always has been, that whenever notice or citation is required, the party cited has the right to appear and be heard; and when the latter is denied, the former is ineffectual for any purpose. The denial to a party in such a case of the right to appear is in legal effect the recall of the citation to him.

\*\* 'A proceeding, 'continued the court, 'professing to determine the right of property, where no notice, written or constructive, is given, whatever else it might be called, would not be entitled to be dignified with the name of a judicial proceeding. It would be a mere arbitrary edict, not to be regarded anywhere as the judgment of a court.'

In the proceedings before the District Court in the confiscation case, monition and notice, as already stated, were issued and published; but the appearance of the owner, for which they called, having been refused, the subsequent sentence of confiscation of his property was as inoperative upon his rights as though no monition or notice had ever been issued. The legal effect of striking out his appearance was to recall the monition and notice as to him. His position with reference to subsequent proceedings was then not unlike that of a party in a personal action, after the service made upon him has been set aside. A service set aside is never service by which a judgment in the action can be upheld.

\*\*The judgments mentioned, given in the cases supposed, would not be merely erroneous; they would be absolutely void; because the court in rendering them would transcend the limits of its authority in those cases.

\*\*It was not within the power of the jurisdiction of the District Court to proceed with the case, so as to effect the rights of the owner after his appearance had been stricken out, and the benefit of the citation to him thus denied. For jurisdiction is the right to hear and determine; not to determine without hearing. And where, as in that case, no appearance was allowed, there could be no hearing or opportunity of being heard, and, therefore, could be no exercise of jurisdiction. By the act of the court, the respondent was excluded from its jurisdiction."

Further and additionally, in Dennis v. Sparks et al., 449 U.S. 24 (1980) the United States Supreme Court held that the action against the private parties accused of conspiring with the judge is not subject to dismissal. The Court held that private persons, jointly engaged with state officials in a challenged action, are acting "under color" of law for purposes of Section 1983 actions. And the judge's immunity from damages liability for an official act that was allegedly the product of a corrupt conspiracy involving bribery of the judge does not change the character of his action or that of his co-conspirators. Historically at common law, judicial immunity does not insulate from damages liability those private persons who corruptly conspire with a judge.

This Honorable United States Supreme Court stated:

"Here the allegations were that an official act of the\* judge was the product of a corrupt conspiracy involving bribery of the judge. Under these allegations, the private parties conspiring with the judge were acting under color of state law; and it is of no consequence in this respect that the judge himself is immune from damages liability. Immunity does not change the character of the judge's action or that of his co-conspirators.\*\* Private parties who corruptly conspire with a judge in connection with such conduct are thus acting under color of state law within the meaning of Section 1983 as it has been construed in our prior cases.\*\*"

In DUE v. Tallahassee Theatres, Inc., et al.

333 F. 2d 630 (5th Cir. 1964) the Court stated:

\*\*"this Court has repeatedly held that if the complaint alleges facts, which, under any theory of the law, would entitle the complainant to recover, the action may not be dismissed for failure to state a claim. \*\*There is no doubt about the fact that the allegations here stated a claim on which relief could be granted, if the facts were proved."\*\*

In Richland Company v. Harper, 302 F. 2d 324

(5th Cir. 1962), it was stated by the Court:

\*\*"a motion to dismiss for failure to state a claim should not be granted unless it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of his claim"\*\*\*

In Holland v. Connors, 491 F. 2d 539, (5th Cir. 1974), the Court in overruling the lower Court's dismissal of the complaint stated:

\*\*\*"Because we cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief, '\*\*\*, we must vacate this dismissal."\*\*\*

The Court in upholding Federally protected rights of the Plaintiff-Appellant to due process of law, and to equal protection of the laws, held in Holland v. Connors, supra, that an action for monetary damages and injunctive relief for deprivation of constitutional rights to due process of law, and to equal protection of the law, formed an ample predicate for Federal relief under civil rights statute. 42 U.S.C. A. Sec. 1983. The Court further found jurisdiction was founded on 28 U.S.C. Sections 1331, 1343 and 42 U.S.C. Sections 1983, 1988.

See also Appendix J through W, pp. 28a- 43a, below.

Contrary to the well established law and precedents of the Honorable Supreme Court of the United States, and other Honorable Judges, and contrary to the Constitution of the United States and Amendments thereto, and contrary to Civil Rights Acts and Laws enacted by the Congress of the United States, the Plaintiffs' complaint herein has been dismissed by decisions and orders of the United States District Court, Miami Division, and the United States Court of Appeals for the Eleventh Circuit, Atlanta, Georgia, and such decisions and orders and various Judges in Miami, Florida and in the United States Court of Appeals for the Eleventh Circuit, Atlanta, Georgia, as herein indicated, are impairing and destroying the lives and property of citizens of the United States, and are depriving them of their property and rights, by disregarding United States Supreme Court decisions, and by disregarding provisions of the United States

Constitution and Amendments thereto, and by disregarding Civil Rights Acts and Laws enacted by the Congress of the United States.

Additionally the United States District Court below, and the United States Court of Appeals for the Eleventh Circuit, were also additionally advised of the following, also duly filed below by the Plaintiffs:

**\*\*"Plaintiffs hereby object to the recommendation and report of Magistrate Samuel J. Smargon\*\***

Each of the Plaintiffs herein respectively object to the entire recommendation. Further each of the Plaintiffs herein respectively object to the entire report, except as hereinafter otherwise indicated.

The recommendation that the complaint fails to state a claim upon which relief may be granted in this Federal Court, and that the complaint be dismissed in this Federal Court, is erroneous, contrary to law and a travesty of justice.

This action by Plaintiffs arises under the Constitution of the United States, and the First, Fourth, Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments to the Constitution of the United States, and under 42 U.S.C.A. Sections 1983, 1985, 1986, 1981, 1982, 1988, and under 28

U.S.C.A. Section 1654. This Court has jurisdiction of this action pursuant to Law and purcuant to 28 U.S.C.A. Sections 1331 and 1343.

Said Magistrate found,

'In their complaint, plaintiffs allege that decedent infringed upon their Constitutional as well as statutory rights to a fair trial and libeled them, causing mental anguish and other harms'

\*\*

'Plaintiffs claim that in 1984, decedent received two default judgments in Dade County against Plaintiffs Irving and Regina Rodin on fabricated charges as a result of bribing judges'

\*\*

'Plaintiffs claim they\*\* were unable to defend themselves'

\*\*

'Plaintiffs claim that they were denied their 6th amendment rights to a fair trial as decedent bribed Florida judges'\*\*

The Magistrate omitted and failed to include the plaintiffs also claimed that they were denied their First, Fourth, Fifth, Eighth, Ninth and Fourteenth Amendment rights to a fair trial.

Are parties only supposed to get a fair trial in criminal cases, but not in civil cases? The answer is obvious.

Parties have the Constitutional right to due process of law which requires in all cases a fair trial allowing lawful and full and fair unencumbered opportunity to all parties to appear and to be heard pro se or by counsel of choice.

Parties further have the Constitutional and Federal rights of equal protection of the law, freedom of speech, to be free from conspiracies, to appeal and secure appropriate appellate redress, to secure relief and redress, without sale, denial or delay, to equal access to the courts, to impartial, disinterested and unbiased Judges and judgments, to timely and prompt determinations of ~~matters pending for determination~~ before the Court, and to be free from excessive fine, and from cruel and unusual punishment, and to be free from deprivation of life, liberty or property, without due process of law, all secured by the Constitution and said Amendments thereto and the Laws of the United States of America.

May Judges not be bribed in criminal cases to secure judgments, and allowed to be bribed in civil cases to secure judgments? Plaintiffs respectfully submit that Judges may not be bribed in any case to secure judgments, and that decedent securing the judgments in the State Court in Dade County, Miami, Florida, on fabricated charges as a result of bribing Judges infringed upon plaintiffs Constitutional and Federal rights to a fair trial and that this Federal Court herein, in Miami, Florida has jurisdiction to set aside and cancel said State Court judgments, and enjoin the enforcement thereof, and afford plaintiffs judgment for damages sustained by them as a

result of said State Court judgments, pursuant to 42 U.S.C.A. Sections 1983, 1985, 1986, 1981, 1982, and 1988. Where a remedy is available under a Civil Rights Act, Plaintiffs need not first seek redress in a State forum.

In addition to the plaintiffs Federal Court Civil rights claims asserted against defendant herein, the plaintiffs also allege claims for breach of contract, abuse of process, prima facia tort and for decedents willful, malicious, wanton and vindictive misconduct, unlawfulness, defamation and slandering of plaintiffs, all as more particularly set forth in the complaint herein. In regard to these claims this Court has pendent jurisdiction to hear them in this Federal Court.

Said Magistrate states 'It is unclear what type of relationship existed between decedent and plaintiffs.' Count V of the complaint herein is indicative of the relationship. The Magistrate completely failed to mention Count V of the complaint in his report, and completely failed to mention the \$100,000.00, or more due and unpaid plaintiffs Irving Rodin and Neil Rodin as agreed with respect to the work, labor, and services performed and furnished for the decedent and requested and accepted by her. (Complaint, Exhibit B, paragraphs 1 through 6 inclusive)

Pendent jurisdiction should be invoked when it will serve the interest of judicial economy, convenience, and fairness to litigants; or when the state claim is closely tied to questions of federal policy. The exercise of pendent jurisdiction has been found to be particularly appropriate in federal civil rights claims since the

violation of federal constitutional guarantees are often closely related to the commission of torts cognizable under state law.

That the Magistrate concerned himself so much with the bribery of Judges and his erroneous efforts to have this Federal Court sweep the same under the rug with his erroneous recommendation, that he also failed to advise the Court that even assuming arguendo that no bribery existed, this Federal Court has jurisdiction herein to set aside and cancel said State Court judgments, and to enjoin the enforcement thereof, and afford plaintiffs monetary compensatory damages and punitive damages with respect thereto.

Even without bribery, the State Court proceedings, trial and judgments rendered thereon were a mockery of justice, a one-sided trial of decedent alone uncontested by anyone, a spectacle of fraud and deceit, in the absence of plaintiffs herein, and not a lawful contest between the parties to the litigation all constituting a Constitutionally unfair trial where only one side was heard, while the other side was not allowed the lawful and full and fair unencumbered opportunity to appear and be heard pro se or by counsel of choice to defend themselves, assert rights and secure redress.

Our Honorable Federal Courts have jurisdiction herein to afford plaintiffs respectively the judgments demanded in the complaint against the defendant herein and to set aside and cancel the State Court judgments, and enjoin their enforcement, and to grant plaintiffs judgment for compensatory damages and punitive damages

for the decedent's willful, malicious, wanton and vindictive violation and deprivation of their Civil and Constitutional rights and the loss of their property and property rights, and for the personal harm and sufferings inflicted upon and sustained by them by virtue of all of the aforesaid.

Said Magistrate also misstated the complaint as may be seen in his allegation that,

'Plaintiffs claim they received no notice of the hearings'\*\*

A proper reading of the complaint shows that plaintiffs complaint is not based on such allegation, and that plaintiffs made no such claim.

That as may be seen in paragraphs '16' and '18' of Exhibit A of plaintiffs complaint, and in Exhibits '1', '2', '3', '4' annexed to and part of plaintiffs complaint herein, and in the complaint, it alleges plaintiffs therein were not allowed to lawfully appear in proper person or by counsel of choice, and that after they were prohibited from lawfully appearing and defending themselves, the decedent subsequently in their absence secured the State Court 'default judgments'.

Said Magistrate also advises the Court that 'Plaintiffs claim they are entitled to a judgment amounting to \$36,000,000.00 or more, plus punitive damages and costs against decedent's estate.'

The word 'plus' is incorrect. The amounts of damages sought by each of the plaintiffs respectively are set forth in pages 15 and 16 of the complaint filed herein, and are inclusive of punitive damages. Said Magistrate also stated 'Defendant filed a

motion to vacate default entries which must be addressed before this court can consider defendant's motion to dismiss.'

Although not a Judge of this Court, and although this motion to vacate default entries was not referred to him for report or recommendation, he decided to address the motion on his own.

Said Magistrate states 'Defendant originally responded to plaintiffs' claims in her motion for extension of time and to stay proceedings (D.E.8) Defendant stated that she had retained counsel on an advisory basis only\*\*'

\*the defendant did not respond. The motion was made by an attorney named Lawrence A. France who was not a party to the action and was not an attorney of record herein.

The Magistrate states

'Plaintiffs obtained a default judgment against defendant on each count of their respective pleadings for failure to respond, pursuant to Federal Rules of Civil Procedure Rule 55. The defaults were properly entered by the Clerk of the Court.'\*\*

Said Magistrate states 'Plaintiff has not provided a case number\*\* in his pleadings.' A reading of the complaint shows that plaintiffs have provided case numbers.

That it was further understood and found by said Magistrate that,

'Plaintiffs allege decedent obstructed their rights to a fair trial by bribing public officials\*\*'

The complaint herein was duly served on the defendant apprising the defendant of the nature and character of the plaintiffs complaint\*\*

\*\*the report and recommendation warrants appropriate judicial rejection and disapproval\*\*

It is respectfully called to this Court's attention that said report and recommendation is in other respects replete with distortions, inaccuracies and erroneous allegations and conclusions stating in effect that 'there are no allegations in the complaint which state a federal question. Therefore, plaintiffs lack jurisdiction to bring their cause in federal court.'\*\* 'plaintiffs have alleged no set of facts which would enable this court to understand the nature of the claim against defendant or the legal basis upon which plaintiffs proceed.'\*\* 'Plaintiffs' complaint fails to state a claim upon which relief may be granted' in this Federal Court in Miami, Florida.

Considering the evil, unlawful and harmful stated acts and proceedings of the decedent, her attorneys, servants, agents and employees, and the resultant substantial damages to plaintiffs and more particularly stated in the complaint herein, it can be seen that an understanding of the complaint requires no more than a proper and unbiased reading and analysis of the same, and to understand that this Federal Court does not lack jurisdiction herein to afford redress to plaintiffs, and that the complaint does state claims upon which relief may be granted in this Federal Court.

\*\*The plaintiffs complaint herein which was never heard and determined on the merits in any court, and the nature of the complaint of each of the plaintiffs respectively, Counts I, II, III, IV, V, VI, VII, VIII, IX and X is evident from a proper reading and analysis of the same, and which as stated in the plaintiffs complaint filed in this Federal Court in Miami, Florida, concerns inter alia the violation and deprivation of plaintiffs Civil, Constitutional and Federal rights and the substantial harm and damages sustained by plaintiffs respectively by virtue thereof and the fraud, unlawful acts, practices and proceedings of decedent, her attorneys, servants, agents and employees and the resultant void and unlawful State Court judgments thereby secured unlawfully and without due process of law, and also concerning the bribery of certain Judges in Miami, Florida with respect to the same; and all of which said Magistrate Smargon would have this Federal Court sweep under the rug herein with his proposed argument that this Federal Court does not have jurisdiction over the complaint which he argues states no claim upon which relief may be granted in this Federal Court in Miami, Florida. Such a report and recommendation aforesaid is not the purpose for which our Honorable Federal Courts were founded and exist and our Federal Court Judges appointed.

Considering the complaint of the plaintiffs herein and considering the Constitution of the United States and the Laws of the United States and the duties of the Judges of our Courts, said report and recommendation of said Magistrate in this Federal Court, should be repugnant to

the President of the United States of America, the Congress of the United States of America, and the many honest Judges, attorneys, citizens and people comprising the United States.

That among other substantial damage sustained by them, the plaintiffs have had their property and property rights taken away from them without due process of law, without lawful and full and fair opportunity to be heard pro se or by counsel of choice to defend themselves in the State Court, and without lawful full and fair opportunity to secure redress in the State Court as to their rights and claims, and by the taking away, by unlawful and void State Court proceedings and judgments, of their deeded rights to a valuable condominium unit of the approximate value of over \$30,000.00, and the decedent's securing of unlawful and void State Court default judgments further including a cruel, unlawful, void and outrageous counsel fee award of \$27,000.00 and costs against Irving Rodin and his deceased wife, Regina Rodin, in their absence after they were unlawfully prohibited in the State Court from lawfully appearing pro se or by counsel of choice.

The unlawful and void State Court default judgments as indicated in the complaint filed herein in this Federal Court, should herein be set aside and cancelled, and their enforcement enjoined, together with awarding judgment in favor of plaintiffs respectively for recovery by plaintiffs for the damages sustained by them, and pursuant to the Constitution and Laws of the United States, 42 U.S.C.A. Secs. 1983, 1985, 1986, 1981, 1982, 1988, 28 U.S.C.A. Secs. 1654, 1331 and 1343.

The defendant not having duly and timely answered the complaint of each of the

plaintiffs or moved and filed papers as required by law on or before May 15, 1989, each of the plaintiffs on May 15, 1989 respectively applied for the entry by the Clerk of defendant's defaults, and on May 16, 1989, the defendant's defaults were duly entered by the Clerk in favor of each of the plaintiffs respectively against the defendant herein.

Thereafter on May 17, 1989 at 2:02 P.M. a motion was filed in this Court seeking to dismiss the complaint and resulting in a reference of the same by Judge Aronovitz to Magistrate Smargon, and the said Magistrate's report and recommendation aforementioned.

On June 7, 1989 a motion was filed herein seeking to set aside and vacate the defendant's defaults, and therein an attorney named Lawrence A. France stated that the motion to dismiss aforementioned 'was hand-delivered to this Court' on May 15, 1989, in contradiction to what the Court's filing stamp of May 17, 1989 at 2:02 P.M. indicates and states."\*\*

Additionally Plaintiffs took "umbrage with Magistrate's Smargon's reference to a case inapplicable to this Federal Court case and the parties herein, with uncalled for language and the use of the words 'dismissed as being frivolous and an abuse of the judicial system' regarding a case in New York which he termed 'a second action was filed in New York', and which had nothing to do with the decedent Nettie Golden, and she was in fact not even a party therein, although Magistrate Smargon improperly and erroneously states she was a party. The true facts show that none of the plaintiffs have been frivolous and abusive of the judicial system, and on the contrary show that plaintiffs have been subjected to frivolousness and abuses in the judicial system.

\*\*Each of the Plaintiffs herein seek redress from this Honorable Court for the substantial harm and damages sustained by each of them respectively, as indicated in the Complaint filed herein, Counts I, II, III, IV, V, VI, VII, VIII, IX and X and Exhibits annexed thereto A, B, C, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, and Plaintiffs repeat and reallege each and every allegation contained in said Complaint and Exhibits herein, and incorporate the same herein by reference with the same force and effect as though repeated at length herein.

That the violation of the Civil rights and Constitutional rights of the Plaintiffs herein and the harm and damages caused each of the Plaintiffs, warrant the condemnation of an Honorable judicial system in the United States, and the granting by this Court of the justice, relief and redress sought by Plaintiffs respectively herein.

Where as in the case at bar, default judgments were obtained in favor of Nettie Golden in purported hearing of a few minutes, in the absence of Plaintiffs, in the State Circuit Court of the Eleventh Judicial Circuit of Florida, in Miami, Florida, depriving Plaintiffs of their rights, title and interest in and to a condominium apartment unit, and further granting \$27,000.00 attorneys fees for Nettie Golden in purported hearing of five minutes in the absence of Plaintiffs without due process of law and opportunity to be lawfully heard in proper person or by counsel of choice, such State court default judgments are not conclusive judgments, and can be set aside and cancelled, and their enforcement enjoined, in an independent action such as in the case at bar in this Honorable Federal Court herein; and where such default judgments were also obtained by fraud, conspiracy, corruption,

unethical practices, misrepresentation, bribery or perjury such State court default judgments are likewise not conclusive judgments, and can be set aside and cancelled, and their enforcement enjoined, in an independent action such as in the case at bar in this Honorable Federal Court.

Said State court default judgments have no res judicata/collateral estoppel effect on a subsequent action such as the action herein in this Honorable Court, which is based on ten different Counts, none of which were previously heard and determined, and neither the laws of the United States, Florida or New York preclude the maintenance of the action and Counts I, II, III, IV, V, VI, VII, VIII, IX and X herein, and the securing of the judgments, relief and redress sought by Plaintiffs herein.\*\*

\*\*That besides having no proper standing the purported motion to dismiss is a deceitful effort to mislead the Court and to delay and harass Plaintiffs herein in the prosecution of the action.

The gross deception of Mr. France and his lying to the Court is clearly evidenced in his erroneous and improper attempt to mislead the Court herein into believing that the action herein has been dismissed by two New York Judges, in New York County and is therefore not maintainable herein. The two Judges referred to by Mr. France are Judges Edward J. Greenfield and Martin B. Stecher.

That with respect to the previous litigation in New York before Judge Stecher, the action in this Honorable Federal Court, and each and all of the Counts herein, were not dismissed on the merits by Judge Stecher. The dismissal of Judge Stecher was a dismissal on the ground of "forum non conveniens", without prejudice to plaintiffs herein, and with the requirement that the Defendant submit

to the jurisdiction of this Honorable Florida Court, and waive any defenses of the Statute of Limitations.

That with respect to the litigation in New York before Judge Greenfield, that case concerned itself with two counts, unrelated to the counts in this Honorable Federal Court herein. That case was not any case against Defendant Tessie Salzman as Personal Representative of the Estate of Nettie Golden, Deceased. That case of Irving Rodin against the four individual defendants therein, concerned itself with these four persons unlawful personal and unlawful business income tax evasion practices in New York. The facts herein and Counts I, II, III, IV, V, VI, VII, VIII, IX and X herein, were in nowise before Judge Greenfield. His decision, partly correct and partly erroneous, in nowise concerned itself with the facts and Counts of Plaintiffs in this Honorable Federal Court herein.

The dismissal of Judge Greenfield of a separate and unrelated case in New York, is no bar to the maintenance in this Honorable Federal Court in Florida of a completely different case and concerning all different Counts and facts, and concerning different parties, nor would New York give any preclusive effect to the decision of Judge Greenfield. The case and the Complaint herein and each and all of the Counts I, II, III, IV, V, VI, VII, VIII, IX and X, thereof, before this Honorable Court were never heard and determined by any other Court, and the merits of the Counts herein were never heard and determined previously.\*#"

Further the Defendant defaulted in duly and timely responding to the summons and complaint as to each of the Plaintiffs respectively and

the Clerk of the United States District Court below duly entered the defaults of the Defendant against the Defendant in favor of each of the Plaintiffs respectively.

Additionally the willful intention of the Defendant to willfully default may be seen amongst the papers filed in the Court below by attorney Lawrence A. France, P.A., on February 24, 1989, that

"Tessie Salzman, by the through a relative, has instructed Lawrence A. France, P.A., not to take any action whatsoever in the Federal Court matter and let same go by default."

Such a Defendant against whom defaults in responding to the complaint have been duly entered thereafter by the Clerk of the Court in favor of the Plaintiffs, should not be granted an order vacating and setting aside the defaults, without showing both (1) a reasonable and proper excuse for Defendant's defaults and (2) a meritorious defense to the complaint. No such showing was made.

Russ v. Gilbert, 19 Fla. 54 (1882)

Atlantic Coast Line R. Co. v. Feagin,  
93 Fla. 1015, 113 So. 89 (1927)

Anderson v. Taylorcraft, Inc., 197  
F. Supp. 872 (1961)

Said Lawrence A. France also operating as Lawrence A. France, P.A., after disregarding Defendant's instructions not to take any action whatsoever in the Federal Court matter and let same go by default, subsequently applied for and obtained the erroneous orders in the United States District Court, Miami Division, and after Plaintiffs-Appellants filed notice of appeal to the United States Court of Appeals for the Eleventh Circuit, the said Lawrence A. France, P.A., "withdrew", and the Defendant's son-in-law, attorney, Harold Monyak, "substituted as attorney of record" as of November 8, 1989 for Defendant herein.

The Defendant herein was duly served with the summons and complaint which clearly and lawfully stated claims for relief within the jurisdiction of the United States District Court below.

The Defendant beyond any reasonable doubt received fair notice of what the Plaintiffs' claims were and the grounds upon which they rested.

The dismissal of the Plaintiffs' complaint was an erroneous and horrendous and harmful exercise of the Court's power over lawful Plaintiffs citizens of the United States and an insult to the Law and to decency, which should in nowise be countenanced and left to stand by the Supreme Court of the United States.

It may also be noted that after erroneously dismissing Plaintiffs' valid complaint, alleging it does not state a claim for relief, the erroneous dismissal was not made good by telling the Plaintiffs they can serve an amended complaint within 30 days, and when the Plaintiffs' complaint in accordance with the well established law should not have been dismissed in the first place.

In view of all of the foregoing and the Authorities referred to and cited herein, it is respectfully submitted that this United States Supreme Court should grant review in the case, and such other and further relief to Petitioners as the Court deems proper and just.

#### CONCLUSION

The petition for a Writ Of Certiorari should be granted, together with such other and further relief to Petitioners as the Court deems proper and just.

Respectfully submitted,

Neil Rodin, Individually, and as Successor  
of Irving Rodin,  
Pro Se, Petitioner  
440 N.E. 141 Street  
North Miami, Florida 33161  
(305) 893-2465

Barbara Rodin  
Pro Se, Petitioner  
440 N.E. 141 Street  
North Miami, Florida 33161  
(305) 893-2465

## APPENDIX



1a

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT  
-----

N . 89-5937  
Non-Argument Calendar  
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D.C. Docket No. 89-0008-Civ-SMA

IRVING RODIN,  
NEIL RODIN,  
BARBARA RODIN,

Plaintiffs-Appellants,

versus

TESSIE SALZMAN, as Personal  
Representative of the Estate  
of NETTIE GOLDEN, Deceased,

Defendant-Appellee.  
-----

Appeal from the United States District Court  
for the Southern District of Florida  
-----

(June 12, 1990)

Before FAY and COX, Circuit Judges, and TUTTLE,  
Senior Circuit Judge.

PER CURIAM: AFFIRMED. See 11th Cir. R. 36-1.

DO NOT PUBLISH (Filed June 12, 1990)

## APPENDIX B

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 89-5937

---

IRVING RODIN,  
NEIL RODIN,  
BARBARA RODIN,

Plaintiffs-Appellants,

VERSUS

TESSIE SALZMAN, as Personal  
Representative of the Estate  
of Nettie Golden, Deceased,

Defendant-Appellee.

---

Appeal from the United States District Court  
for the Southern District of Florida

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ON PETITION(S) FOR REHEARING AND SUGGESTION(S)  
OF REHEARING IN BANC

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(Opinion June 12, 1990, 11 Cir., 198\_, \_F.2d\_).

(August 10, 1990)

Before FAY and COX, Circuit Judges, and TUTTLE,  
Senior Circuit Judge.PER CURIAM: The Petition(s) for Rehearing are  
DENIED and no member of this panel nor other  
Judge in regular active service on the Court  
having requested that the Court be polled on  
rehearing in banc (Rule 35, Federal Rules of  
Appellate Procedure; Eleventh Circuit Rule 35-5),  
the Suggestion(s) of Reharing In Banc are DENIED.  
ENTERED FOR THE COURT:Peter T. Fay

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United States Circuit Judge (Filed AUG 10 1990)

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT  
-----

No. 89-5937  
Non-Argument Calendar  
-----

D.C. Docket No. 89-0008-Civ-SMA

IRVING RODIN,  
NEIL RODIN,  
BARBARA RODIN,

Plaintiffs-Appellants,

VERSUS

TESSIE SALZMAN, as Personal  
Representative of the Estate  
of NETTIE GOLDEN, Deceased,

Defendant-Appellee.  
-----

Appeal from the United States District Court  
for the Southern District of Florida  
-----

(June 12, 1990)

Before PAY and COX, Circuit Judges, and TUTTLE,  
Senior Circuit Judge.

PER CURIAM: AFFIRMED. See 11th Cir. R. 36-1.

"Costs taxed against plaintiffs-appellants."

Judgment Entered: June 12, 1990

For the Court: Miguel J. Cortez, Clerk

By: Karlien McNabb  
Deputy Clerk

ISSUED AS MANDATE: AUG 20 1990

DO NOT PUBLISH

APPENDIX D

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 89-0008-CIV-ARONOVITZ

IRVING RODIN, NEIL RODIN and  
BARBARA RODIN,

Plaintiffs,

vs.

TESSIE SALZMAN, as Personal  
Representative of the Estate of NETTIE  
GOLDEN, Deceased,

Defendant.

---

ORDER OF STAY

THIS CAUSE came before the court upon  
the Defendant Personal Representative's  
Motion for Extension of Time and Motion to  
Stay Proceedings.

THE COURT has considered the motion and  
the pertinent portions of the record, and  
being otherwise fully advised in the  
premises, it is hereby

ORDERED AND ADJUDGED that the said motion  
be, and the same is, hereby GRANTED. This  
matter will be stayed until May 15, 1989 at

which time the parties shall file a joint status report detailing the posture of the case. Notwithstanding this forthcoming report, if no adequate response has been filed by that time the Court will act as it deems appropriate which may include entering a default pursuant to the Federal Rules of Civil Procedure.

DONE AND ORDERED in Chambers at Miami, Florida, this 15 day of March, 1989.

Sidney M. Aronovitz  
UNITED STATES DISTRICT JUDGE

copies furnished to:

Lawrence A. France, P.A.  
Irving Rodin  
Neil Rodin  
Barbara Rodin

(Entered March 16, 1989)

APPENDIX E

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 89-8-CIV-ARONOVITZ

IRVING RODIN, NEIL RODIN  
and BARBARA RODIN

Plaintiff,

vs.

TESSIE SALZMAN, as Personal  
Representative of the Estate  
of Nettie Golden, Deceased,

Defendant.

---

ORDER OF REFERENCE TO  
U.S. MAGISTRATE

Pursuant to 28 U.S.C. Section 636 and  
Local Magistrate Rules 1-4, the following  
is/are referred to U.S. Magistrate Samuel  
J. Smargon for a Report and Recommendation  
and/or Order, as appropriate: Status Report  
of Plaintiffs and Motions of Plaintiffs  
Respectively for Default.

DONE AND ORDERED in Chambers, at Miami,  
Florida, this 17 day of May, 1989.

Sidney M. Aronovitz  
U.S. District Court Judge

cc: U.S. Magistrate Smargon (Entered May 19, 1989)

APPENDIX F

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 89-8-CIV-ARONOVITZ

IRVING RODIN, NEIL RODIN  
and BARBARA RODIN

Plaintiff,

vs.

TESSIE SALZMAN, as Personal  
Representative of the Estate  
of Nettie Golden, Deceased,

Defendant.

---

ORDER OF REFERENCE TO  
U.S. MAGISTRATE

Pursuant to 28 U.S.C. Section 636 and  
Local Magistrate Rules 1-4, the following  
is/are referred to U.S. Magistrate Samuel  
J. Smargon for a Report and Recommendation  
and/or Order, as appropriate: Deft's.  
Motion to Dismiss.

DONE AND ORDERED in Chambers, at Miami,  
Florida, this 19 day of May, 1989.

Sidney M. Aronovitz  
U.S. District Court Judge

cc: U.S. Magistrate Smargon  
(Entered May 22, 1989)

APPENDIX G

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 89-8-CIV-ARONOVITZ

IRVING RODIN, NEIL RODIN and  
BARBARA RODIN,  
Plaintiff,

vs.

TESSIE SALZMAN, as Personal  
Representative of the Estate of  
NETTIE GOLDEN, Deceased,  
Defendant.

---

REPORT AND RECOMMENDATION

Defendant filed a Motion to Dismiss pursuant to Federal Rules of Civil Procedure Rule 12(b)(6) for failure to state a claim and 28 U.S.C. Sections 1331, 1332 for lack of federal jurisdiction. The Honorable Sidney M. Aronovitz, United States District Judge, referred this matter to the undersigned for a preliminary review of the administrative record and a report and recommendation pursuant to 28 U.S.C. Section 636 and Rule 1 of the Magistrate

Rules applicable in this District. See  
Mathews v. Weber, 423 U.S. 261 (1976).

### Procedural History

This action began in the Supreme Court Of The State of New York, County of New York in 1984 naming Nettie Golden (decedent) as defendant (D.E. 1 at Exhibit C) and was dismissed without prejudice based on forum non conveniens, as all parties resided in Florida (D.E. 14 at 4-8). A second action was filed in New York and dismissed as being frivolous and an abuse of the judicial system (D.E. 14 at 11-14). In the interim, Nettie Golden died and plaintiffs proceeded to file a claim in the Eleventh Judicial District Circuit Court of Florida, Probate Division seeking in excess of \$36,000,000.00 against her estate (D.E. 1 at Exhibit D). Plaintiffs subsequently filed this action on January 3, 1990 (D.E. 1). Defendant filed a motion motion to extend time and stay proceedings, stating she had no intention of

responding (D.E. 8 at 2), which was granted on March 15, 1989 (D.E. 9). Plaintiffs subsequently moved for defaults on all counts of the complaint, which were granted (D.E. 11, 12, 13, 17). Defendant has asked this court to vacate the default entries (D.E. 22) and dismiss plaintiffs' complaint (D.E. 14).

#### Factual Background

Plaintiffs Irving, Neil and Barbara Rodin, along with and on behalf of Irving Rodin's wife Regina (now deceased) filed this action to recover monetary and punitive damages from the estate of Nettie Goldman (D.E. 1 at 1-16). It is unclear what type of relationship existed between decedent and plaintiffs. In their complaint, plaintiffs allege that decedent infringed upon their Constitutional as well as statutory rights to a fair trial and libeled them, causing mental anguish and other harms (D.E. 1-16 at 1 and Exhibit A at 1-13). Plaintiffs claim that in 1984, decedent received two default judgments in Dade County against plaintiffs Irving and Regina Rodin on

fabricated charges as a result of bribing judges in the Circuit and Appellate Courts (D.E. 1, Exhibit A at 1-2). There is no indication in the record what these charges consisted of. Plaintiffs claim they received no notice of the hearings and were unable to defend themselves (1d). Plaintiffs attempted to bring suit against decedent in the Supreme Court of New York on two occasions (D.E. 1 at Exhibit C, 14). These actions were dismissed for reasons of forum non conveniens (D.E. 14 at 8) and the frivolous nature of the claim (D.E. 14 at 14). The second claim involved decedent and other parties on a separate claim. Plaintiffs allege the dismissal of the first claim based on forum non conveniens requires defendant to submit to the jurisdiction of this court (D.E. 1 at 13, p. 60). Plaintiffs claim they are entitled to a judgment amounting to \$36,600,000.00 or more, plus punitive damages and costs against decedent's estate (D.E. 1 at 15-16).

Defendant originally responded to plaintiffs' claims in her motion for extension of time and to stay proceedings (D.E. 8). Defendant stated that she had retained counsel on an advisory basis only, and that out of state counsel had advised her that plaintiffs had no claim and thus to allow defaults on all responsive pleadings (D.E. 8 at 2-3). Defendant stated that the assets of the estate were being protected and requested that a court order be obtained from the Probate Court in regards to this matter (D.E. 8 at 3). Defendant's attorney also petitioned the court for an order directing how to proceed in this matter (D.E. 8 at Exhibit A). Plaintiffs claimed defendant failed to file responses to any of plaintiffs' pleadings, and plaintiffs obtained default entries (D.E. 11, 12, 13, 17).

Defendant has now filed motions to vacate the defaults (D.E. 22) and to dismiss this action for failure to state a claim and lack of federal jurisdiction (D.E. 14). Defendant

asks that the defaults be vacated as they were entered prematurely by the Clerk of the Court (D.E. 22 at 1-2). The first default was entered one day after defendant hand-delivered his motion to dismiss to the court (D.E. 22 at 1). As to the motion to dismiss, defendant states plaintiffs' complaint is "rambling, redundant, repetitious" and without facts to support the contentions made or any basis upon which relief may be granted (D.E. 14 at 1-2, p. 2-4). Defendant contends plaintiffs have also failed to exhaust state court remedies, and have no jurisdictional basis on which to proceed in federal court (D.E. 14 at 2, p. 5-10).

Plaintiffs' answer to defendant's motion to dismiss is equally rambling and gives no adequate reason why this court should deny defendant's motion (D.E. 21).

Plaintiffs state defendant's motion is a "gross deception" and defendant is "lying ... in an erroneous and improper attempt to mislead the Court" (D.E. 21 at 5).

AnalysisMotion to Vacate Default Entries

Plaintiffs obtained a default judgment against defendant on each count of their responsive pleadings for failure to respond, pursuant to Federal Rules of Civil Procedure Rule 55. The defaults were properly entered by the Clerk of the Court. Fed.R.Civ.P. 55 (b)(1). Defendant filed a motion to vacate default entries which must be addressed before this court can consider defendant's motion to dismiss.

This court may set aside defaults upon defendant's request provided defendant makes a showing of good cause under Rules 55(c) and 60(b). Defendant must be able to show that there was "(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party ... or (6) any other reason justifying relief from the operation of the judgment." Fed.R.Civ.P. 60(b). The decision

to set aside a default entry "rests in the sound discretion of the Court." Moran v. Mitchell, 354 F.Supp 86,87 (E.D.Va. 1973). See also Rasmussen v. W.E. Hutton & Co. 68 F.R.D. 231 (D.C.Ga 1975). The court need not consider a default entry in the same light as a default judgment as they are distinct concepts. United States v. Topeka Livestock Auction, Inc., 392 F.Supp 944, 950 (N.D. In 1975). The court should set aside the default entry unless the defendant fails to give a valid excuse for his neglect. Moran 354 F.Supp at 87.

In this case, Defendant claims that defaults were entered prematurely by the Clerk. Defendant had been granted a stay or proceedings and an extension of time until May 15, 1989. On that date, defendant's motion to dismiss was hand-delivered to the court. On May 16, 1989 plaintiffs moved for the default entries. Defendant's motion clearly states a valid explanation that meets the Moran standard

for vacating the default entries.

Motion to Dismiss

Under 28 U.S.C. Sections 1331-1332 and the Federal Rules of Civil Procedure Rule 12(b)(6), plaintiffs' claim should be dismissed. In order for a federal court to take jurisdiction over a claim, there must be either a federal question arising out of the Constitution or laws of the United States (28 U.S.C. Section 1331) or a case of controversy seeking in excess of \$50,000.00 excluding costs and fees and involving diversity of citizenship (28 U.S.C. Section 1332). Neither of those situations exist here. Although the amount in controversy is quite large, all of the parties are residents of Florida. While plaintiffs claim their action arises under seven constitutional amendments as well as violations of 28 U.S.C. 1654, there are no allegations contained in the complaint which state a federal question.

Therefore, plaintiffs lack jurisdiction to bring their cause in federal court.

Plaintiffs claim that they were denied their 6th amendment rights to a fair trial as decedent bribed Florida judges and notice of the proceedings was never provided.

Florida law provides that a court setting a case for trial must enter an order 30 days prior to service of the notice for trial. Fla. Stat. Ann. Section 1.440 (c)

(West Supp. 1989). See also Town of

Coreytown v. State, 60 So.2d 482, 487

(1952). It would be unlikely that a court of this state would fail to follow

statutory procedure providing adequate

notice of an impending action. Plaintiff

has not provided a case number or docket

sheet in his pleadings. Substantiation

of this claim would only be possible if

we could determine where to begin. Sixth

amendment protections do not extend to the

same extent in a civil trial as in a

criminal proceeding. A civil litigant has

no constitutional right to counsel.

Cannon v. Loyola University of Chicago,

676 F. Supp. 823, 830 (N.D. II. 1987).

"(A) part from trials conducted in violation of express constitutional mandates, a constitutionally unfair trial takes place only when the barriers and safeguards are so relaxed or forgotten ... that the proceeding is more a spectacle...than a disciplined contest." U.S.v.Augenblick, 393 U.S. 348,356 (1969). By way of analogy, the Supreme Court has stated that protection of the 4th amendment only extends to unreasonable searches by governmental agents, not against private citizens. U.S. v. Jacobsen, 466 U.S. 109, 113 (1984). In light of these decisions, plaintiffs do not have a constitutional issue to present before this court.

Under the Federal Rules, plaintiffs' complaint must contain a short and plain statement of any claim which would show they are entitled to relief. Fed.R.Civ.P 8(a)(e).

Plaintiffs' complaint consists of an exhaustive listing of Constitutional rights allegedly denied them by decedent, but does not state the manner in which the injury occurred. Plaintiffs allege decedent obstructed their rights to a fair trial by bribing public officials and failing to notify plaintiffs of a pending hearing and that default judgments were obtained against plaintiffs. Plaintiffs fail to state when these judgments were obtained and what the cause of action was. None of these claims are stated in such a manner that this court could reasonably be expected to fashion a remedy.

Federal Rules of Civil Procedure Rule 12(b)(6) gives a court the discretion to dismiss a cause for "failure of the pleading to state a claim upon which relief can be granted." A complaint should only be dismissed when "plaintiff cannot establish any meritorious claim against the defendant

under any theories proposed in his pleadings." Nevels v. Wilson, 402 F.2d 479 (5th Cir. 1968) See also Investors Syndicate Of America v. City of Indian Rocks Beach, 434 F.2d 871 (5th Cir. 1970).

In this case, plaintiffs do not come close to satisfying the pleading requirements of the Rules. Even giving the pleadings the liberal reading to which pro se plaintiffs are generally entitled, Holland v. Connors, 491 F.2d 539 (5th Cir. 1974), plaintiffs have alleged no set of facts which would enable this court to understand the nature of the claim against defendant or the legal basis upon which plaintiffs proceed.

#### Recommendation

Because plaintiffs' complaint fails to state a claim upon which relief may be granted, it is

RECOMMENDED that the complaint be dismissed.

The parties may serve and file written objections to this Report with The Honorable Sidney M. Aronovitz, United States District

Judge, within ten (10) days of receipt.

See 28 U.S.C. Section 636(b)(1)(C). United States v. Warren, 687 F. 2d 347 (11th Cir. 1982), cert. denied, 460 U.S. 1087 (1983), and Hardin v. Wainwright, 678 F.2d 689 (5th Cir. Unit B 1982). See also Thomas v. Arn, 474 U.S. 140 (1985), reh. denied 474 U.S. 1111 (1986).

DATED in Miami, Florida on this 20 day of June, 1989.

Samuel J. Smargon  
**SAMUEL J. SMARGON**  
UNITED STATES MAGISTRATE

cc: All council of record

(Entered July 10, 1989)

APPENDIX H

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 89-8-Civ-ARONOVITZ

IRVING RODIN, NEIL RODIN,  
and BARBARA RODIN,

Plaintiff,

v.

TESSIE SALZMAN, as Personal  
Representative of the Estate  
of NETTIE GOLDEN, Deceased,

Defendant.

---

ORDER OF DISMISSAL

THIS MATTER is before the Court upon a Report and Recommendation submitted by the Honorable Samuel J. Smargon, United States Magistrate, wherein he has recommended to the Court that this defendant's Motion to Dismiss be granted. Plaintiffs have submitted objections to the Report and Recommendation of the United States Magistrate.

This Court has considered the foregoing

as well as the entire record of proceedings in the file of this Court, and being otherwise fully advised in the premises, it is

ORDERED and ADJUDGED that defendant's Motion to Dismiss the Complaint be and the same is hereby GRANTED WITHOUT PREJUDICE and with leave of Court to file an amended complaint WITHIN THIRTY (30) DAYS HEREFROM, which amended complaint should comply with Fed. R. Civ. P. 8. To the extent that the Motion to Dismiss is GRANTED, the United States Magistrate's Report and Recommendation is RATIFIED, AFFIRMED and APPROVED. Plaintiffs' Objections are SUSTAINED to the extent that the recommendation that dismissal be dismissal be with prejudice is disallowed and leave is GRANTED to file an amended complaint as herein noted.

Plaintiffs' appear here pro se. The complaint is a rambling, disjointed recitation which seeks to adopt allegations from another law suit, a copy of the complaint from which

is attached to this complaint. A defendant cannot frame a responsive answer to the pleading which has been submitted as a complaint herein and the complaint simply does not state a complaint for relief as presently submitted. Whether or not the plaintiffs can state a claim for relief will have to be reviewed both from a jurisdictional standpoint and a substantive standpoint when the amended complaint is received. Plaintiffs would be well-advised to seek the services of an attorney to prepare and file the amended complaint and further represent them herein. This Court does not have funds allocated for representation of parties in civil actions.<sup>1</sup>

DONE and ORDERED in Chambers at Miami, Southern District of Florida this 25 day of July, 1989.

Sidney M. Aronovitz  
SIDNEY M. ARONOVITZ  
UNITED STATES DISTRICT JUDGE

copies furnished to:

Neil Rodin, pro se  
 Tessie Salzman  
 Lawrence A. France, P.A.  
 Irving Rodin

(Entered July 28, 1989)

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<sup>1</sup>  
 See Order Setting Aside and Vacating  
 Defaults entered under even date herewith.

APPENDIX I

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 89-8-Civ-ARONOVITZ

IRVING RODIN, NEIL RODIN,  
and BARBARA RODIN,

Plaintiff,

v.

TESSIE SALZMAN, as Personal  
Representative of the Estate  
of NETTIE GOLDEN, Deceased,

Defendant.

---

ORDER VACATING AND  
SETTING ASIDE DEFAULTS

THIS MATTER was considered by the Court upon defendant's Motion to Vacate Default Entries. Defendant has submitted good cause to support the Motion to Vacate Defaults and has submitted a valid explanation meeting the Moran standard, 354 F.Supp. 86 (E.D. Va. 1973). The United States Magistrate in a Report and Recommendation dated June 20, 1989, has recommended that the defaults be vacated and also plaintiffs have objected thereto. It is thereupon

ORDERED and ADJUDGED that the defaults heretofore entered by the Clerk of this Court in favor of the plaintiffs and against the defendant be and the same are hereby VACATED and SET ASIDE. The Report and Recommendation of the United States Magistrate is APPROVED, RATIFIED and AFFIRMED, and plaintiffs Objections thereto are OVERRULED.

DONE AND ORDERED in Chambers at Miami, Southern District of Florida this 25 day of July, 1989.

Sidney M. Aronovitz  
SIDNEY M. ARONOVITZ  
UNITED STATES DISTRICT JUDGE

copies furnished to:

Neil Rodin, pro se  
Tessie Salzman  
Lawrence A. France, P.A.  
Irving Rodin

(Entered July 25, 1989)

## APPENDIX J

## U.S. CONSTITUTION, ARTICLE VI

\*This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

## APPENDIX K

## U.S. CONSTITUTION, ARTICLE III

Section 1. The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges both of the supreme and inferior Courts, shall hold their Offices. during good Behaviour, and shall, at stated Times receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. The judicial Power shall extend to all Cases in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;\*

## APPENDIX L

## U.S. CONSTITUTION, AMENDMENT XIV

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## APPENDIX M

## U.S. CONSTITUTION, AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

## APPENDIX N

## U.S. CONSTITUTION, AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

## APPENDIX O

## U.S. CONSTITUTION, AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## APPENDIX P

## U.S. CONSTITUTION, AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

## APPENDIX Q

## U.S. CONSTITUTION, AMENDMENT IX

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

## CIVIL RIGHTS

42 UNITED STATES CODE, SECTION 1983

SECTION 1983. CIVIL ACTION FOR DEPRIVATION  
OF RIGHTS

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

## APPENDIX S

## CIVIL RIGHTS

42 UNITED STATES CODE, SECTION 1985

SECTION 1985. CONSPIRACY TO INTERFERE  
WITH CIVIL RIGHTS

- (2) \*\*if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;
- (3) If two or more persons in any State or Territory conspire \*\* for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; \*\*

(Continued on next page 38a)

## APPENDIX S CONTINUED

## CIVIL RIGHTS

## 42 UNITED STATES CODE, SECTION 1985

SECTION 1985. CONSPIRACY TO INTERFERE  
WITH CIVIL RIGHTS

\*in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

## APPENDIX T

## PUBLIC HEALTH &amp; WELFARE

42 UNITED STATES CODE, SECTION 1988

SECTION 1988. PROCEEDINGS IN VINDICATION  
OF CIVIL RIGHTS;  
ATTORNEY'S FEES

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; \*\*

In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

## APPENDIX U

## APPEARANCE

28 UNITED STATES CODE, SECTION 1654

SECTION 1654. APPEARANCE PERSONALLY  
OR BY COUNSEL

In all court of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

## APPENDIX V

## DISTRICT COURTS; JURISDICTION

28 UNITED STATES CODE, SECTION 1331

## SECTION 1331. FEDERAL QUESTION

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

APPENDIX W

DISTRICT COURTS; JURISDICTION

28 UNITED STATES CODE, SECTION 1343

SECTION 1343. CIVIL RIGHTS AND  
ELECTIVE FRANCHISE

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in Section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the  
(Continued on next page 43a)

## APPENDIX W CONTINUED

## DISTRICT COURTS; JURISDICTION

28 UNITED STATES CODE. SECTION 1343

SECTION 1343. CIVIL RIGHTS, AND  
ELECTIVE FRANCHISE

Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For the purposes of this section-

(1) the District of Columbia shall be considered to be a State; and

(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.